

REMARKS

Claims 1, 3, 9-16 and 23-26 are now pending in the application. Claims 4-8 and 17-21 have been withdrawn. Claims 1, 3, 9-16 and 22-26 stand rejected. Claim 2 has been cancelled herein. Claims 1 and 14 have been amended. Claim 1 has been amended to further clarify the scope of Applicants' claims and Claim 14 has been amended to overcome a minor informality. Bases for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

DRAWINGS

The undersigned gratefully acknowledges the Examiner's acceptance of the drawings filed with this application on January 28, 2004.

REJECTION UNDER 35 U.S.C. § 102

Claims 1 and 11-13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fowkes et al. (U.S. Pat. No. 4,339,015; hereinafter "Fowkes"). This rejection is respectfully traversed.

At the outset, Applicants note that independent Claim 1 has been amended to recite:

a fuel tank supported on said frame assembly
and in fluid communication with said power train to provide a
primary source of said fuel thereto such that said fluid
storage volume is a reserve fuel tank. (emphasis added)

Applicants respectfully assert that at least these features as claimed are not taught or suggested by Fowkes.

Fowkes appears to disclose an internal combustion engine 26 used as a charging unit to charge batteries 22, which supply power to an electric motor 31 (see at least Column 2, Lines 37-40 and 50-55). The electric motor 31 drives the vehicle through a transmission system 29, 33 (see at least Column 2, Lines 52-60). Fuel is supplied to the internal combustion engine 26 through the frame 17 (see at least Column 2, Lines 42-45). Thus, the fuel supplied to the internal combustion engine 26 through the frame 17 comprises the primary source, and only source, of fuel for the internal combustion engine 26, and is not a reserve tank for either the internal combustion engine 26 or the electric motor 31.

Accordingly, as Fowkes does not teach or suggest every feature claimed in independent Claim 1, Applicants submit that Claim 1 is patentable and in condition for allowance. With regard to Claims 11-13, Applicants respectfully submit that as these claims depend from independent Claim 1, these claims are also believed to be patentable and in condition for allowance. Reconsideration and withdrawal of this rejection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fowkes in view of Short (U.S. Pat. No. 6,453,885; hereinafter "Short"). Claims 2, 3, 14-16, and 24-26 stand rejected as being unpatentable over Fowkes in view of Riemer et al. (U.S. Pat. No. 5,662,184; hereinafter "Riemer"). Claims 9, 10, 22, and 23 stand rejected as being unpatentable over Fowkes in view of Riemer et al. as applied to Claims 1 and 14 above, and further in view of Finamore (U.S. Pat. No. 6,969,545; hereinafter "Finamore"). As Claim 2 has been cancelled, this rejection has been rendered moot. As

for Claims 3, 9, 10, 14-16, 22-26, these rejections are respectfully traversed.

At the outset, Applicants note that independent Claim 14 recites:

a power train supported on said frame assembly, said power train including a fuel cell operable to convert a hydrogen-containing fuel and an oxidant into electrical energy and a motor electrically connected to said fuel cell to convert said electrical energy into rotary movement of a shaft;

* * *

a fuel tank supported on said frame assembly and in fluid communication with said fuel cell to provide a primary source of said hydrogen-containing fuel thereto; and

a fluid storage volume defined within said at least one elongated rail and in fluid communication with said power train to provide an operational fluid thereto, said operational fluid being selected from the group consisting of said hydrogen-containing fuel, said oxidant and said cooling fluid.

Applicants respectfully assert that these features as claimed are not taught or suggested by Fowkes, Short, Riemer or Finamore, either alone or in combination.

Applicants respectfully assert that it is improper to modify Fowkes with Riemer. First, there is no teaching or suggestion in Fowkes regarding the desirability of this modification. Second, it is an object of Fowkes to provide "a motor vehicle with a battery pack and a charging unit in convenient form which will provide a practical range of use of the vehicle" (see at least Column 1, Lines 40-43). Accordingly, it is improper for the Examiner to modify Fowkes to include a fuel cell, as it would render Fowkes unsatisfactory for its intended purpose and it would impermissibly change the principle of operation of Fowkes. Specifically, if proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d

900, 221 USPQ 1125 (Fed. Cir. 1984) MPEP 2143.01. Additionally, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) MPEP 2143.01. As the Examiner's combination of Fowkes with Riemer would render the method of operation of Fowkes unsatisfactory for its intended purpose, the Examiner's combination is improper and does not create a *prima facie* case of obviousness under 35 U.S.C. § 103(a). Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection to independent Claim 14 under 35 U.S.C. § 103(a).

Further, Claims 3, 9, 10, 15, 16, and 22-26 depend directly or indirectly from independent Claims 1 or 14, which are believed to be in condition for allowance for the reasons stated herein, Applicants respectfully assert that these claims are also in condition for allowance.

Additionally, however, with regard to Short as applied to Claim 9, Applicants respectfully submit that Short fails to teach or suggest a liner that seals the fluid storage volume. Rather, Short appears to disclose a secondary fuel containment layer 34 disposed within a primary fuel containment layer 30 to reduce the emissions of the primary fuel containment layer 30 (see at least Column 3, Lines 5-10 and Lines 53-63). Specifically, due to the nature of gasoline fuel vapors and the material used to form the secondary fuel containment layer 34, the secondary fuel containment layer 34 does not **seal** the fluid storage volume, as claimed herein. Rather, the secondary fuel containment layer 34 serves to only reduce the amount of fuel vapors that pass onto the primary fuel containment layer 30, but does not seal the primary fuel containment layer

30 from the media within the secondary fuel containment layer 34.

With regard to Finamore as applied to Claims 9, 10, 22 and 23, Applicants submit that it is improper to modify Fowkes to include the teachings of Finamore, as it would render Fowkes improper for its intended purpose. Specifically, Finamore teaches a hydrogen storage medium for a fuel cell, which cannot be properly combined with Fowkes.

Thus, Applicants respectfully request that the Examiner reconsider and withdraw his rejection to Claims 3, 9, 10, 15, 16, and 22-26 under 35 U.S.C. § 103(a).

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the

Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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